BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

STATE OF WEST VIRGINIA,

Plaintiff below/Appellee,

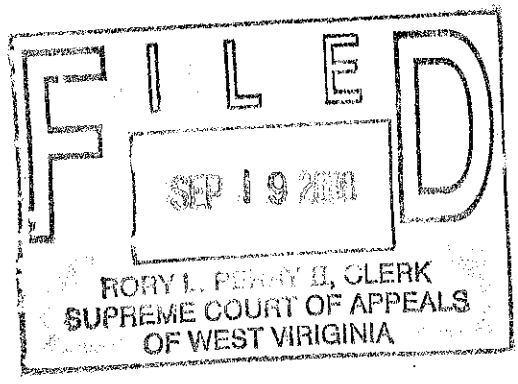
v.

Docket No.:34158
(Berkeley County Case No.: 07-F-69)

MICHAEL S. HUTZLER,

Defendant below/Appellant.

BRIEF OF STATE OF WEST VIRGINIA



State of West Virginia,

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I. KIND OF PROCEEDING AND NATURE OF THE RULING BELOW.

This is a case where the Appellant confessed to a Burglary and other offenses he committed in Berkeley County. The charges were mistakenly filed in Jefferson County Magistrate Court. After the Berkeley County offenses were dismissed from the Jefferson County Magistrate Court, a Berkeley County Grand Jury indicted the Appellant for those Berkeley County offenses.

Pursuant to a conditional plea agreement, the Appellant pleaded guilty to the indicted charge of felony Destruction of Property, in violation of **West Virginia Code** § 61-3-30(b). The statutory sentence imposed was suspended for a term of three years' probation. The other indicted felony charges of felony Burglary and Grand Larceny were then dismissed.

The victim was a former girlfriend of the Appellant living in Berkeley County. She arrived home one night and caught the Appellant at her home burglarizing and stealing from her. Upon being discovered, the Appellant chased the woman and her companion in his vehicle into adjoining Jefferson County. The Appellant was caught by State Police stationed in Jefferson County. The Appellant admitted breaking into the woman's home and stealing her property.

The State Police in Jefferson County charged the Appellant with Jefferson County misdemeanor charges of Domestic Assault, Assault, Possession of Cocaine, and False Information. The State Police in Jefferson County erroneously also charged the felonies of Burglary and Grand Larceny, which had occurred solely in Berkeley County and for which there was no venue in Jefferson County.

The Appellant delayed these matters coming on for hearing in Jefferson County Magistrate Court for six months. When the matter finally came on for a preliminary hearing on the felony charges (and an initial hearing on the attached misdemeanors), the Jefferson County

Assistant Prosecutor learned that the felonies were committed in Berkeley County, and dismissed those charges at that time since they were not properly brought in Jefferson County. The Appellant then pleaded to the Jefferson County misdemeanors of Domestic Assault and Assault and was placed on probation.

A Berkeley County Grand Jury subsequently indicted the Appellant for the Berkeley County felonies of Burglary, Grand Larceny and Destruction of Property. The Berkeley County Circuit Court denied the Appellant's Motion to Dismiss the charges upon reviewing the proffers and affidavits of the parties of what had transpired in Jefferson County Magistrate Court. The circuit court also denied the Appellant's Motion to Dismiss for alleged loss of blood evidence found at the scene of the crime where the Appellant had been caught in the act.

Upon the denial of these two motions, the Appellant entered his conditional guilty plea to the felony Destruction of Property, preserving the right to appeal these two issues. The Appellant was convicted, sentenced and placed on probation by written Order entered January 17, 2008.

The State of West Virginia respectfully requests this Honorable Court to affirm the rulings of the circuit court below and deny the appeal.

II. STATEMENT OF THE FACTS

1. The victim in this case, Sharla Hollida, lives at a residence on Hollida Road, Martinsburg, Berkeley County, West Virginia, about two miles west of the Berkeley-Jefferson County Line.

2. On Sunday, October 16, 2005, at 0330 hours, a domestic assault call was received by Jefferson County emergency services by a woman identified as Ms. Hollida. Ms. Hollida stated that her ex-boyfriend, your Appellant, was chasing she and her current boyfriend, John Campbell,

in a vehicle (which she identified) and was trying to hit the vehicle in which she was riding and run it off the road. [West Virginia State Police Report of Criminal Investigation, 11/15/05, R. 122-130.]

3. Minutes later, State Trooper Glende of the Charles Town, Jefferson County, Detachment, found the Appellant and his vehicle at the 7-11 in Shepherdstown, Jefferson County. The Appellant told Trooper Gelnde that he traveled to Ms. Hollida's house to get his belongings, and saw Ms. Hollida and her new boyfriend there. [Id.]

4. Trooper Glende observed clothing in the back of the Appellant's truck and asked whose clothing it was. The Appellant insisted it was his, despite the fact that the clothing was women's clothing. The Appellant was then arrested for False Information. A search incident to the arrest turned up a small amount of cocaine and a straw with cocaine residue. [Id.]

5. Shortly thereafter, Ms. Hollida identified the clothing and furniture in the back of the Appellant's truck as hers and valued them at about $2000.00. She reported that she had returned to her home at about 2:30 that morning. The Appellant then ran up to her car yelling and banging on the car windows and jumped on her windshield. She got away and sought help from Mr. Campbell, who returned to the home with her. She and Mr. Campbell reported that the Appellant was still there and began chasing them in his truck, trying to run them off of the road. [Id.]

6. The Appellant admitted in a written statement to Trooper Glende that he was mad at Ms. Hollida and pushed a window in her house and took her things. He also admitted to chasing Ms. Hollida and the other man in his vehicle. [Statement of Michael S. Hutzler, 10/16/05, R. 60-61, 210-211.]

7. Ms. Hollida contacted Trooper Glende at 5:45 that morning to inform him that a

screen had been pushed in at her home and property destroyed. [West Virginia State Police Report of Criminal Investigation, 11/15/05, *supra*.]

8. The next day Trooper Glende traveled to Ms. Hollida's home in Berkeley County (about two miles west of the Jefferson County line as the crow flies) and observed severe damage to her porch, sliced telephone and TV wires, and destroyed personal property. [Id.]

9. Trooper Glende charged both the Berkeley County incidents and the Jefferson County incidents in Jefferson County. [Criminal Complaint, Jefferson County Magistrate Court Case Nos.: 05-F-432 and 433; 05-M-3503-3507, R. 100-102.]

10. Due to the Appellant's failure to appear, and then his counsel's continuance motions, the Appellant's preliminary hearing in Jefferson County did not occur until April 4, 2006.

11. As to what occurred at that preliminary hearing in Jefferson County Magistrate Court[1], in Jefferson County Assistant Prosecuting Attorney Stephen Groh's affidavit, he attests that he is a Jefferson County Assistant Prosecuting Attorney and represented the State during the preliminary hearing of these matters in Jefferson County, on April 4, 2006. He realized from speaking with the victim and the arresting officer that the charges arising in Berkeley County would have to be dismissed and that he would deal with the Jefferson County misdemeanor

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[1]The Appellant misrepresents to this Court in the argument portion of his Brief that the Jefferson County proceedings took place in Jefferson County *Circuit* Court. The Jefferson County proceedings took place *only* in Jefferson County *Magistrate* Court, none of the charges progressing beyond the single hearing actually had in that court. The State referenced this misrepresentation in its previously filed Response to the Petition, but the Appellant persists in trying to mislead this Court by repeating this error in its brief. *See* Appellant's Brief, 9, 12, 18, 21. This is significant because magistrate courts are not courts of record, but only courts of *limited* record. State v. McCraine, 214 W.Va. 188, 197, 588 S.E.2d 177, 186 (2003); **W. Va. Code** § 50-5-8. Consequently, the records of a magistrate court are not as complete as a court of record.

charges. He briefly negotiated with Harley Wagner, the Appellant's counsel, and agreed to a resolution of the Jefferson County misdemeanor charges, with restitution of $5000.00. He made it clear that the charges arising in Berkeley County were to be dismissed because they did not occur in Jefferson County and he did not have the authority to resolve them. He indicated that Mr. Wagner expressed hope that Berkeley County would not pursue those charges. He signed the Motion to Nolle Prosequi but never saw the Probation Discharge Order before it was executed by a different APA. [Affidavit of Stephen Groh, 6/14/07, R. 184-185.]

12. A Berkeley County Grand Jury subsequently indicted the Appellant for the felonies of Burglary, Grand Larceny and Destruction of Property. [Indictment, 2/07.]

13. The Appellant, with the same counsel, Mills & Wagner, PLLC, as represented him in Jefferson County, was arraigned on March 5, 2007, before the Berkeley County Circuit Court. [Arraignment Order and Trial Schedule, 3/5/07, R. 14-15.]

14. About three weeks after arraignment on the Berkeley County Indictment, on what appears to be the 28th day of March, 2007, and with full knowledge of the Berkeley County Indictment, the Appellant's counsel returned to Jefferson County and presented a "Probation Discharge Order" not to Mr. Groh, but to a different Jefferson County Assistant Prosecuting Attorney. That Order was an attempt to lay groundwork for his later claim that Berkeley County could not bring the felony charges, as it stated that the Burglary, Grand Larceny and Destruction of Property charges were all "dismissed, per said plea with the State." [Probation Discharge Order, R. 164-165.]

15. In June 2007, the Appellant then moved to dismiss the Berkeley County Indictment, alleging a double jeopardy bar and the destruction of some blood evidence seized from Ms.

Hollida's home, asserting the Probation Discharge Order as proof. The State responded in opposition, including Mr. Groh's affidavit. [Motion to Dismiss, 6/1/07, R. 88-130; Amended Motion to Dismiss, 6/11/07, R. 133-175; State's Response[s] to Amended Motion to Dismiss, 6/18/07 and 7/2/07, R. 178-185, 191-196.]

16. At an August 2, 2007, hearing on the Motions to Dismiss, the parties presented no testimony or further argument but agreed to rely solely on the pleadings and on affidavits from Jefferson County Assistant Prosecuting Attorney Groh, the Appellant and the Appellant's counsel as to the double jeopardy issue. [Pre-Trial Hearing Order, 9/4/07.]

16a. The summary of Mr. Groh's affidavit is presented in Paragraph 11, above.

16b. Mr. Wagner's affidavit does not refute Mr. Groh's assertion that Mr. Wagner expressed hope that Berkeley County would not pursue the charges, but claims that there were "extensive negotiations" and that the charges were dismissed with "understood prejudice."

16c. The Appellant's affidavit is verbatim from Mr. Wagner's, with only the names and pronouns changed.

17. Based on this information, the circuit court ruled that there was no substantial element of any of the Berkeley County Crimes that was committed in Jefferson County, that the Berkeley County charges were not properly brought in Jefferson County, that the Berkeley County charges were not dismissed as part of the Jefferson County plea agreement, and that the dismissal of those charges in Jefferson County did not therefore pose a double jeopardy issue for the Appellant. The circuit court also ruled that the blood samples that the State Trooper collected at the scene of the crime, though negligently destroyed prior to testing, were well overshadowed by other material evidence, such as two eyewitnesses placing the Appellant at the

scene of the crime, the Appellant being found in possession of items stolen from the victim's home, and the Appellant's admission to having broken into the home and stealing her belongings. [Id.]

18. The Appellant subsequently pleaded guilty to felony Destruction of Property, as Indicted, retaining his right to appeal the denial of the Motions to Dismiss. Per the plea agreement, the Appellant was sentenced to the statutory sentence of one-to-ten (1-10) years in the penitentiary, which sentence was suspended for three (3) years of probation. [Conviction and Sentencing Order, 1/17/08.]

19. The State of West Virginia respectfully requests this Honorable Court to affirm the rulings of the circuit court below and deny the appeal.

III. RESPONSE TO ASSIGNMENT OF ERROR

A. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING THE APPELLANT'S MOTION TO DISMISS UPON FINDING THAT NO DOUBLE JEOPARDY ISSUE WAS IMPLICATED.

B. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING THE APPELLANT'S MOTION TO DISMISS UPON FINDING THAT THE NEGLIGENTLY DESTROYED BLOOD EVIDENCE DID NOT AFFECT THE APPELLANT'S ABILITY TO DEFEND AGAINST THE ALLEGATIONS, GIVEN THAT HE WAS CAUGHT ON THE SCENE AND ADMITTED TO COMMITTING THE BURGLARY AND GRAND LARCENY.

IV. AUTHORITIES RELIED UPON

V. ARGUMENT.

A. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING THE APPELLANT'S MOTION TO DISMISS UPON FINDING THAT NO DOUBLE JEOPARDY ISSUE WAS IMPLICATED.

1. Standards of Review.

This Court recently reiterated its standard that: "'[A] double jeopardy claim . . . [is] reviewed *de novo*.' Syllabus Point 1, in part, *State v. Sears*, 196 W. Va. 71, 468 S.E.2d 324 (1996)." State v. Ray, —W.Va. —, —S.E.2d— (No. 33324, decided November 8, 2007).

> " ' "To warrant a change of venue in a criminal case, there must be a showing of good cause therefor, the burden of which rests on the defendant, the only person, who, in any such case, is entitled to a change of venue. The good cause aforesaid must exist at the time application for a change of venue is made. Whether, on the showing made, a change of venue will be ordered rests in the sound discretion of the trial court; and its ruling thereon will not be disturbed, unless it clearly appears that the discretion aforesaid has been abused." Point 2, syllabus, *State v. Wooldridge,* 129 W.Va. 448, 40 S.E.2d 899 (1946).' Syllabus Point 1, *State v. Sette,* [161] W.Va. [384], 242 S.E.2d 464 (1978)." Syl. pt. 1, *State v. Zaccagnini,* 172 W.Va. 491, 308 S.E.2d 131 (1983).

Syl. Pt. 2, State v. McFarland, 175 W.Va. 205, 332 S.E.2d 217 (1985).

2. Discussion.

The Appellant herein was never at risk of facing multiple punishments for the same conduct. *W. Va. Const.* Art. 3, § 5 states in part: "nor shall any person, in any criminal case, [...] be twice put in jeopardy of life or liberty for the same offence." The Appellant was never in jeopardy because the Berkeley County charges could have only been brought in the venue in which the Appellant committed them: Berkeley County.

This is so because *W. Va. Const.* Art. 3, § 14 requires that:

> Trials of crimes, and misdemeanors, unless herein otherwise provided, shall be [...] in the county where the alleged offence was committed, unless upon petition of the accused, and for good cause shown, it is removed to some other county.

This Court long recognizes this constitutional principle: "As long recognized by this Court, '[u]nder the Constitution and laws of this state, a crime can be prosecuted and punished only in the state and county where the alleged offense was committed.' Syl. Pt. 2, State v. McAllister, 65 W.Va. 97, 63 S.E. 758 (1909). *See also* State ex rel. Haught v. Donnahoe, 174 W.Va. 27, 32, 321 S.E.2d 677, 682 (1984)." State v. Dennis, 216 W.Va. 331, 607 S.E.2d 437, 448 (2004). [2]

It is not disputed that the home at which the Appellant was caught red-handed having burgled and currently stealing from was in Berkeley County. The Appellant admitted breaking into that home and stealing his former girlfriend's belongings. Venue for these offenses and the felony Destruction of Property to which the Appellant pleaded guilty could only be in Berkeley County. These crimes could only be prosecuted in Berkeley County. State v. Dennis.

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[2] The circuit court's order adopts the term "jurisdiction," which was used by the parties in their pleadings below. However, the circuit court's order is properly read as meaning "venue" without changing the substance of the ruling. The distinction between the terms jurisdiction and venue are well delineated in this Court's opinion in State v. Tommy Y., Jr., 219 W.Va. 530, 637 S.E.2d 628 (2006). *See also*: State v. Dennis, *supra*; State v. Burton, 163 W.Va. 40, 254 S.E.2d 129, 140-141 (1979). This Court has a long-standing rule of affirming trial court judgments when the record supports those judgments, even if for some other legal basis:

> 'This Court may, on appeal, affirm the judgment of the lower court when it appears that such judgment is correct on any legal ground disclosed by the record, regardless of ground, reason or theory assigned by the lower court as the basis for its judgment. Syllabus Point 3, *Barnett v. Woolfolk*, 149 W. Va. 246, 140 S.E.2d 466 (1965).'

Syl. Pt. 11, SER Vernatter v. Warden, 207 W. Va. 11, 528 S.E.2d 207 (1999).

In his presentation to the circuit court below, the Appellant mistakenly relied upon two statutory exceptions to this constitutional venue requirement, neither one of which the circuit court found persuasive. These felony offenses of Burglary, Grand Larceny and Destruction of Property were not committed on the county boundary, such that the venue provision of **W. Va. Code** § 61-11-11 [3] would apply. Instead, these offenses were committed solely at the victim's home in Berkeley County, about two miles west of the Berkeley-Jefferson County line as the crow flies. Berkeley County alone was the proper venue for these felonies. State v. Dennis.

Nor did these offenses have some elements committed in one county and some in another, such that the venue provision of **W. Va. Code** § 61-11-12 [4] would apply. All of the elements of these felony offense of Burglary, Grand Larceny and Destruction of Property were committed solely in Berkeley County. The Jefferson County misdemeanor offenses were committed solely in Jefferson County. Berkeley County alone was the proper venue for these felonies; Jefferson County alone was the proper venue for the misdemeanors charged there. State v. Dennis.

The Appellant suggests for the first time on appeal, never having raised it below, that he *waived* venue on the Berkeley County charges when he pleaded guilty to the Jefferson County misdemeanors. There is no merit to this argument. There is nothing in the record to demonstrate that the Appellant moved for a change of venue, or showed good cause for such change, as

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[3]**W. Va. Code** § 61-11-11 reads: "An offense committed on the boundary of any two counties may be alleged to have been committed, and may be prosecuted and punished, in either county."

[4]**W. Va. Code** § 61-11-12 reads: "When an offense is committed partly in one county and partly in one or more other counties within this State, it may be alleged that the offense was committed and the accused may be tried in any one county in which any substantial element of the offense occurred."

required by *W. Va. Const.* Art. 3, § 14. *See* Syl. Pt. 2, State v. McFarland, *supra*; **W. Va. Code** § 62-3-13.[5]

The Jefferson County Magistrate Court had no motion before it, oral or written, from the Appellant requesting a change of venue or waiver thereof. The Jefferson County Magistrate made no findings that the Appellant showed good cause for a change of venue or that the Appellant affirmatively waived of venue. The Jefferson County Assistant Prosecuting Attorney made no reference to a change of venue (in fact, Mr. Groh's affidavit explains that the Berkeley County offenses were dismissed precisely because they were brought in the wrong county). The Berkeley County Prosecuting Attorney was given no notice or opportunity to be heard at all on the matter. There was simply neither a change of venue nor a waiver of venue cognizable under the legal standards of *W. Va. Const.* Art. 3, § 14 State v. McFarland, supra, or **W. Va. Code** §

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[5] **W. Va. Code** § 62-3-13 reads:

> A court may, on the petition of the accused and for good cause shown, order the venue of the trial of a criminal case in such court to be removed to some other county. When the venue is so changed, the court making the order shall recognize the witnesses and the accused (if the offense be bailable and bail be given) to appear on some certain day before the court to which the case is removed; if the offense be not bailable, or the bail required be not given, the court shall remand him to its own jail, and order its officer to remove him thence to the jail of the court to which the case is so removed, so that he shall be there before the day for the appearance of the witnesses. The clerk of the court that orders a change of venue shall certify copies of such recognizance, and of the record of the case, to the clerk of the court to which the case is removed; and such court shall proceed with the case as if the prosecution had been originally therein, and for that purpose the certified copies aforesaid shall be sufficient.

62-3-13.

Nor could the Appellant have *passively waived* venue of the Berkeley County felonies by virtue of the Jefferson County plea agreement. Changes of venue require affirmative action. *W. Va. Const.* Art. 3, § 14, State v. McFarland, supra, **W. Va. Code** § 62-3-13. Moreover, the circuit court specifically found that the dismissal of the Berkeley County felonies of Burglary and Grand Larceny by the Jefferson County Assistant Prosecutor was separate and distinct from the plea agreement entered on the Jefferson County misdemeanors. [Pre-trial Hearing Order, p. 5.]

The Berkeley County felonies were improperly charged by the State Trooper in the wrong venue of Jefferson County. The circuit court found that the dismissal of those Berkeley County felonies was not part of the Jefferson County plea agreement. The Jefferson County Magistrate Court made no finding regarding a change of or waiver of venue, nor was he requested to by the Appellant.

The affidavits relied upon by the parties before the circuit court demonstrate that the Appellant and his counsel state the sole basis of their belief that the Berkeley County felonies were dismissed in Jefferson County with prejudice is because the Magistrate Court Case Disposition Sheets note the felony dismissals as "dismissed per plea." The Appellant and his counsel never reference a belief that the Appellant affirmatively moved for a change of venue or that the Appellant affirmatively waived venue or that the matter was ever presented to the Magistrate.

Unrefuted is Jefferson County Assistant Prosecuting Attorney Groh's affidavit, where he first asserts that he made it clear that the charges arising in Berkeley County were to be dismissed because they did not occur in Jefferson County and that he did not have the authority to resolve

them. Also unrefuted is Mr. Groh's statement that Mr. Wagner then expressed hope that Berkeley County would not pursue those charges. As to the Case Disposition Sheets, Mr. Groh affirmatively states that he did not write "dismissed per plea" on the Case Disposition Sheets.[6]

The circuit court found that Mr. Groh did not write the "dismissed per plea" language on the Case Disposition Sheet. As the sole basis offered by the Appellant and his counsel for their belief that the Berkeley County charges were dismissed as part of the plea, the circuit court's finding is dispositive. [7]

The circuit court properly denied the Motion to Dismiss as the Appellant failed to prove as a matter of law that he was ever in jeopardy on the Berkeley County felony counts of Burglary or Grand Larceny that were erroneously charged in Jefferson County by the investigating officer. *W. Va. Const.* Art. 3, § 5. No change or waiver of venue was addressed because the Appellant never raised the issue of venue waiver until he did so on appeal. The circuit court did not abuse

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[6] The Case Disposition Sheets are forms that the Magistrates and Magistrate Court personnel prepare.

[7] The Appellant urges this Court to make its own credibility determination as to the affidavits since no live testimony was taken, citing Ware v. Howell, 217 W.Va. 25, 614 S.E.2d 464 (2005)(deference to lower court's credibility determinations evaporates when testimony was presented by depositions rather than oral testimony). If this Court finds that this proposition applies to the affidavits in the case *sub judice*, then the Appellant cannot be heard to complain regarding the development of that evidence. The parties agreed to submit the evidence on the affidavits rather than by live testimony. Any failure of the Appellant to have more fully developed his own witnesses' evidence, or to cross-examine the State's witness, "is a tactical decision with which a party must live." *Id.*, at 614 S.E.2d 464, 470. *See* State ex rel. Cooper v. Caperton, 196 W.Va. 208, 216, 470 S.E.2d 162, 170 (1996) ("The rule in West Virginia is that ... if [parties] forget their lines, they will likely be bound forever to hold their peace.").

its discretion in denying the Appellant's Motion to Dismiss regarding the double jeopardy argument. This Court is respectfully requested to affirm the rulings of the circuit court and deny the appeal.

B. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING THE APPELLANT'S MOTION TO DISMISS UPON FINDING THAT THE NEGLIGENTLY DESTROYED BLOOD EVIDENCE DID NOT EFFECT THE APPELLANT'S ABILITY TO DEFEND AGAINST THE ALLEGATIONS, GIVEN THAT HE WAS CAUGHT ON THE SCENE AND ADMITTED TO COMMITTING THE BURGLARY AND GRAND LARCENY.

1. Standard of Review.

This Court's test from State v. Osakalumi, 194 W. Va. 758, 461 S.E.2d 504 (1995), regarding the negligent destruction of evidence applies.

2. Discussion.

The Appellant was caught by the homeowner at the Berkeley County home he broke into. The homeowner was the Appellant's former girlfriend, so the Appellant's identity was immediately known. In case the Appellant was concerned that his identitity was not known, he proceeded to assault the victim and her companion by chasing them in his vehicle into the adjoining county. There, the Appellant was caught by the State Police with goods stolen from the victim's house and confessed to the police that he had broken into the home and stolen the goods.

Despite all of this solid evidence against him, the Appellant absurdly moved the circuit court to dismiss the Indictment because the police negligently destroyed some untested blood samples taken from the scene so that he could not properly defend himself. The circuit court,

however, properly applied each of the standards of Osakalumi. The only standard in dispute herein is the circuit court's determination that there existed other sufficient evidence linking the Appellant to the crime.

The Appellant offers no plausibly reasonable argument for dismissal of the indictment in the face of his being caught on the scene and confessing to the police. Osakalumi's application as a tool for trial courts (and the case *sub judice*) looks to the sufficiency of the State's other evidence to determine whether the criminal defendant is prejudiced by the State's negligent destruction of evidence. Here, the circuit court properly concluded that the Appellant was not prejudiced by the loss of the untested blood evidence since, even if it tested as someone else's blood, the Appellant would still have to overcome the State's eyewitness evidence and the Appellant's own confession to the crimes.

The circuit court did not abuse its discretion in denying the Appellant's Motion to Dismiss regarding the blood evidence. Osakalumi. This Court is respectfully requested to affirm the circuit court's rulings and deny the appeal.

VI. CONCLUSION.

The Appellant pleaded guilty after confessing to crimes he was seen committing. This Court is respectfully requested to affirm the circuit court's rulings and deny the appeal since the circuit court properly ruled the Appellant was not at risk of being twice placed in jeopardy. State v. Dennis. This Court is respectfully requested to affirm the circuit court's rulings and deny the appeal since the circuit court properly ruled that he was not prejudiced by the loss of some blood evidence. Osakalumi.

Respectfully submitted,
State of West Virginia

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true copy of the foregoing **BRIEF OF STATE OF WEST VIRGINIA** on this the 18th day of September, 2008, by __ hand-delivery, _x_ first-class mail, postage prepaid, __ facsimile to:

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